

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BRENT ARCHER NEWCOMER

Case No. 2012-290

Registered Nurse License No. 289407

Respondent.

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 27, 2012.

IT IS SO ORDERED this June 27, 2012.



Erin Niemela
Temporary Chair
Board of Registered Nursing
Department of Consumer Affairs
State of California

1. KAMALA D. HARRIS
Attorney General of California
2. GLORIA A. BARRIOS
Supervising Deputy Attorney General
3. KATHERINE MESSANA
Deputy Attorney General
4. State Bar No. 272953
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5. Los Angeles, CA 90013
Telephone: (213) 897-2554
6. Facsimile: (213) 897-2804

7. *Attorneys for Complainant*

8. **BEFORE THE**
9. **BOARD OF REGISTERED NURSING**
10. **DEPARTMENT OF CONSUMER AFFAIRS**
11. **STATE OF CALIFORNIA**

12. In the Matter of the Accusation Against:

Case No. 2012-290

13. **BRENT ARCHER NEWCOMER**

14. 244 W. Cypress Ave, #C
Monrovia, CA 91016

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15. Registered Nurse License No. 289407

16. Respondent.

17. In the interest of a prompt and speedy resolution of this matter, consistent with the public
18. interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
19. Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which
20. will be submitted to the Board for approval and adoption as the final disposition of the
21. Accusation.

22. **PARTIES**

23. 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board
24. of Registered Nursing. She brought this action solely in her official capacity and is represented in
25. this matter by Kamala D. Harris, Attorney General of the State of California, by Katherine
26. Messana, Deputy Attorney General.

27. 2. Brent Archer Newcomer ("Respondent") is representing himself in this proceeding
28. and has chosen not to exercise his right to be represented by counsel.

1 3. On or about March 31, 1978, the Board of Registered Nursing issued Registered
2 Nurse License No. 289407 to Brent Archer Newcomer. The Registered Nurse License was in full
3 force and effect at all times relevant to the charges brought in Accusation No. 2012-290 and will
4 expire on February 29, 2012, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 2012-290 was filed before the Board of Registered Nursing
7 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The
8 Accusation and all other statutorily required documents were properly served on Respondent on
9 November 8, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A
10 copy of Accusation No. 2012-290 is attached as **Exhibit A** and incorporated by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, and understands the charges and allegations in
13 Accusation No. 2012-290. Respondent also has carefully read, and understands the effects of this
14 Stipulated Surrender of License and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 2012-290, agrees that cause exists for discipline and hereby surrenders his Registered Nurse
27 License No. 289407 for the Board's formal acceptance.
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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Registered Nurse License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 289407, issued to Respondent Brent Archer Newcomer, is surrendered and accepted by the Board of Registered Nursing.

1 1. The surrender of Respondent's Registered Nurse License and the acceptance of the
2 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
3 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
4 license history with the Board of Registered Nursing.

5 2. Respondent shall lose all rights and privileges as a Registered Nurse in California as
6 of the effective date of the Board's Decision and Order.

7 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
8 issued, his wall certificate on or before the effective date of the Decision and Order.

9 4. If Respondent ever files an application for licensure or a petition for reinstatement in
10 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
11 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
12 effect at the time the petition is filed, and all of the charges and allegations contained in
13 Accusation No. 2012-290 shall be deemed to be true, correct and admitted by Respondent when
14 the Board determines whether to grant or deny the petition.

15 5. If and when Respondent's license is reinstated, he shall pay to the Board costs
16 associated with its investigation and enforcement pursuant to Business and Professions Code
17 section 125.3 in the amount of \$9,189.25. Respondent shall be permitted to pay these costs in a
18 payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the
19 Board from reducing the amount of cost recovery upon reinstatement of the license.

20 6. If Respondent should ever apply or reapply for a new license or certification, or
21 petition for reinstatement of a license, by any other health care licensing agency in the State of
22 California, all of the charges and allegations contained in Accusation, No. 2012-290 shall be
23 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
24 Issues or any other proceeding seeking to deny or restrict licensure.

25 7. Respondent shall not apply for licensure or petition for reinstatement for two (2)
26 years from the effective date of the Board of Registered Nursing's Decision and Order.


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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

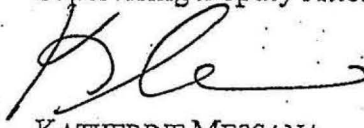
4/10/12
BRENT ARCHER NEWCOMER
RespondentENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General


KATHERINE MESSANA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2012-290

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KATHERINE MESSANA
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-290

13 **BRENT ARCHER NEWCOMER**

14 244 W. Cypress Ave, #C
Monrovia, CA 91016

ACCUSATION

15 Registered Nurse License No. 289407

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1: Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about March 31, 1978, the Board of Registered Nursing issued Registered
23 Nurse License Number 289407 to Brent Archer Newcomer ("Respondent"). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on February 29, 2012, unless renewed.

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JURISDICTION AND STATUTORY PROVISIONS

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code states:

"The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license."

6. Section 118, subdivision (b) of the Code also grants the Board jurisdiction over suspended, expired, forfeited, cancelled, or surrendered licenses:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

7. Section 2761 of the Code states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following..."

8. Section 2762 of the Code states, in full:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

1 (b) Use any controlled substance as defined in Division 10 (commencing
2 with Section 11000) of the Health and Safety Code, or any dangerous drug or
3 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
4 in a manner dangerous or injurious to himself or herself, any other person, or the
5 public or to the extent that such use impairs his or her ability to conduct with safety to
6 the public the practice authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription,
8 consumption, or self-administration of any of the substances described in
9 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
10 record pertaining to, the substances described in subdivision (a) of this section, in
11 which event the record of the conviction is conclusive evidence thereof.

12 (d) Be committed or confined by a court of competent jurisdiction for
13 intemperate use of or addiction to the use of any of the substances described in
14 subdivisions (a) and (b) of this section, in which event the court order of commitment
15 or confinement is prima facie evidence of such commitment or confinement.

16 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
17 unintelligible entries in any hospital, patient, or other record pertaining to the
18 substances described in subdivision (a) of this section."

19 REGULATIONS

20 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

21 "A conviction or act shall be considered to be substantially related to the
22 qualifications, functions or duties of a registered nurse if to a substantial degree it
23 evidences the present or potential unfitness of a registered nurse to practice in a
24 manner consistent with the public health, safety, or welfare."

25 COST RECOVERY PROVISION

26 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

29 DRUG DEFINITIONS

30 11. **Hydromorphone (Dilaudid)** – a Schedule II controlled substance pursuant to Health
31 and Safety Code section 11055, and a dangerous drug pursuant to Business and Professions Code
32 section 4022. It is a narcotic analgesic used for the relief of severe pain.

33 CENTINELA HOSPITAL MEDICAL CENTER

34 12. Respondent was employed as a registered nurse in the Cardiovascular Intensive Care
35 Unit ("CICU") at the Centinela Hospital Medical Center ("CHMC") from in or about November
36 1, 2001 to in or about May, 2010. He worked the 7:00 p.m. shift to 7:00 a.m. shift.

13. At all times relevant to the charges herein, CHMC used a drug dispensing system called the "Pyxis System." Pyxis is a trade name for an automated single-unit-dose medication dispensing system that delivers medications to an individual authorized to access the system. The delivery of medications is accomplished when an authorized individual enters a password (or fingerprint) known only to that individual. The medication drawer, or container, is unlocked and the medication is removed from the machine and then administered to the designated patient. The machine records the user name, patient name, medication, dose, date and time of the withdrawal. The Pyxis is integrated with hospital pharmacy inventory management systems.

14. On or about June 2, 2010, the Board received a complaint form from S.V., Risk Manager at CHMC regarding a narcotic discrepancy involving Respondent. The Complaint stated that Respondent, while on duty in the CICU at CHMC, diverted narcotics on two occasions for a comatose patient not assigned to him. An investigation was opened and interviews as well as a review of relevant documents revealed the following discrepancies:

PATIENT 1 (B.L.)

Date & Time	Drug and Quantity Withdrawn from Pyxis	Charting
04/24/10 (1929)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg
04/25/10 (2250)	#1 Dilaudid 2 mg/ml	1 mg ordered, 2 mg charted
04/29/10 (2024)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg
04/30/10 (0253)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg
05/01/10 (1326)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg
05/01/10 (0630)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg

SUMMARY: Newcomer obtained 12 mg Dilaudid. 7 mg Dilaudid was administered to this patient with a physician's order. The physician's order called for 1 mg Dilaudid every four hours as needed for severe pain. There is no documentation regarding wastage. There are discrepancies between the 4/25/10 Pyxis withdrawal and the 4/25/10 and 4/26/10 MAR documentation. 5 mg Dilaudid is unaccounted.

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PATIENT 2 (H.H.)

Date & Time	Drug and Quantity Withdrawn from Pyxis	Charting
01/31/10 (0307)	#1 Dilaudid 2 mg/ml	1 mg ordered, 0 mg charted, no wastage of 2 mg
02/01/10 (0609)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg
SUMMARY: Newcomer obtained 4 mg Dilaudid. 1 mg Dilaudid was administered to this patient with a physician's order. The physician's order called for 1 mg Dilaudid every two hours as needed for pain. There is no documentation regarding wastage. There is no documentation regarding the 1/31/10 Dilaudid withdrawal. 3 mg Dilaudid is unaccounted.		

PATIENT 3 (B.J.)

Date & Time	Drug and Quantity Withdrawn from Pyxis	Charting
04/20/10 (2345)	#1 Dilaudid 2 mg/ml	0.5 mg ordered, 0 mg charted, no wastage of 2 mg
04/21/10 (0210)	#1 Dilaudid 2 mg/ml	0.5 mg ordered, 0.5 mg charted, no wastage of 1.5 mg
04/21/10 (2016)	#1 Dilaudid 2 mg/ml	0.5 mg ordered, 0.5 mg charted, no wastage of 1.5 mg
SUMMARY: Newcomer obtained 6 mg Dilaudid. 1 mg Dilaudid was administered to this patient with a physician's order. The physician's order called for 0.5 mg Dilaudid every four hours as needed. There is no documentation regarding wastage. There is no documentation regarding the 4/20/10 Dilaudid withdrawal. There are discrepancies between the 4/21/10 Pyxis withdrawal at 2016 hours and the 4/21/10 MAR documentation at 0800 hours. 5 mg Dilaudid is unaccounted for.		

PATIENT 4 (G.A.)

Date & Time	Drug and Quantity Withdrawn from Pyxis	Charting
04/15/10 (0128)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg
04/15/10 (2151)	#1 Dilaudid 2 mg/ml	1 mg ordered, 1 mg charted, no wastage of 1 mg
SUMMARY: Newcomer obtained 4 mg Dilaudid. 2 mg Dilaudid was administered to this patient with a physician's order. The physician's order called for 1-0 mg Dilaudid every two hours as needed for severe pain. There is no documentation regarding wastage. 2 mg Dilaudid is unaccounted for.		

15. On or about May 23, 2011, an Investigator with the Board interviewed Respondent. During the interview, Respondent admitted that prior to the May 2010 discovery, he diverted Dilaudid for self-administration for approximately seven (7) months, weekend binging. Respondent told the Investigator that the comatose patient never received the Dilaudid. Respondent further admitted to practicing under the influence of Dilaudid. Additionally, Respondent told the Investigator that he had been terminated in 1998 from Good Samaritan Hospital for diverting Dilaudid for personal use.

1 January 31, 2010, and May 1, 2010, while employed as a registered nurse at CHMC, Respondent
2 falsified, or made grossly incorrect or grossly inconsistent entries in the hospital records
3 pertaining to Dilaudid, a controlled substance and dangerous drug, in violation of the law. The
4 conduct is more particularly described in paragraphs 12 through 15, inclusive, above, and herein
5 incorporated by reference.

6 **DISCIPLINARY CONSIDERATIONS**

7 20. To determine the degree of discipline, if any, to be imposed on Respondent,
8 Complainant alleges that on or about March 11, 2005, in a prior disciplinary action entitled, *In the*
9 *Matter of the Accusation Against Brent Archer Newcomer*, before the Board, in Case No. 2004-
10 113 (OAH No. L2004010340), Respondent's license was revoked, the revocation was stayed, and
11 Respondent was placed on probation for three (3) years. Respondent completed probation on
12 March 10, 2008.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 289407, issued to Brent Archer Newcomer;
2. Ordering Brent Archer Newcomer to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

November 8, 2011

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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